IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 9 of 2006.

Institute for Design of Electrical Measuring Instruments. ... Petitioner.

V/s.

J.S.Sonawale & another. ... Respondents.

CORAM : V.C.DAGA, J.

DATED : 23rd January, 2006.

V.P.Vaidya for the petitioner.

P.M.Mokashi for respondent No.1.

P.C. :

Respondent No.1 is served. Since respondent No.2 is a formal party, service to respondent No.2 is dispensed with.

2. Rule, returnable forthwith. Heard by consent of parties.

3. This petition is directed against the order dated 19th October 2005 passed by the Industrial Tribunal, Maharashtra at Mumbai in Application (IT) No.16 of 1996 in Reference (IT) No.88 of 1991 rejecting the application under section section 33(2)(b) of the Industrial Disputes Act, 1947.

4. The factual matrix as mentioned in paras-2 to 4 of the impugned order are not in dispute. As such reproduction thereof is not necessary.

5. It will be sufficient to mention that respondent No.1 was working as Helper in the petitioner- institute. He remained absent from duties without any intimation, consequently, show cause notice dated 10th January, 1990 was sent to him. It was returned undelivered with the postal endorsement “not claimed”. The petitioner- employer treated the postal endorsement “not claimed” as refusal on the part of the noticee to receive show cause

notice and proceeded to issue chargesheet to respondent No.1 and conducted inquiry against him. The Inquiry Officer concluded that the charges levelled against respondent no.1 were proved and submitted his report. Thereupon, a disciplinary authority imposed punishment of dismissal on 4th June, 1996 on the opponent on the basis of findings of the Inquiry Officer. At the time of termination of respondent No.1, one month's basis pay, as required under law, was paid to respondent No.1.

6. In the above factual backdrop, the petitioner approached the Industrial Tribunal contending that the dismissal of respondent No.1 is based on his misconduct and not on the basis of any other matter connected with the dispute pending before the Tribunal in the Reference as such the respondent No.1, not being a protected workman, the action of the petitioner- employer may be approved. This prayer has been turned down by the Industrial Tribunal vide its order dated 19th October, 2005. This order is subject matter of

challenge in this petition filed under Articles 226 of the Constitution of India.

7. The learned Member of the Industrial Tribunal after hearing rival parties recorded a finding that the endorsement “not claimed” does not tantamount not acceptance of refusal to accept show-cause-notice. Consequently, it was held that there was no service of show-cause-notice on respondent No.1. In the result, the inquiry conducted was held to be bad. This finding, ultimately, resulted in rejection of the prayer made by the petitioner- employer.

8. The learned counsel for the petitioner submits that the entire impugned order revolves around one singular finding that the postal endorsement “not claimed” amounts to no service of the notice and, therefore, the action of the employer is bad. He submits that the said finding of the Industrial Court is absolutely erroneous and contrary to the law laid down by this Court. He placed reliance on the judgment

of this Court in the case of **P.A. Kowli v. Narayan Jagannath Mahale**, 1981 Mh.L.J. 355; wherein this Court construed the meaning of the word or expression “not claimed” and squarely laid down that this expression tantamounts to refusal on the premise that where an intimation about the article is received and the article is not claimed or no efforts to receive that article were made when it was available for being claimed, it amounts to a deliberate neglect or refusal to receive that article.

9. Following the view of this Court, the finding recorded by the Industrial Tribunal around which the entire order revolves is unsustainable. If the postal endorsement “not claimed” amounts to refusal then, in that event, such refusal will have to be treated as good service.

10. In this view of the matter, the impugned order is set aside. The proceedings are remitted back to the Industrial Tribunal for

consideration afresh after hearing the parties to the proceedings in the light of the law laid down by this Court in the above-referred case. The Industrial Tribunal is expected to hear and dispose of the application as expeditiously as possible, at any rate, within three months from the date of receipt of writ of this order.

11. In the result, petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)